



# **Missouri Department of Natural Resources**

## **Clean Water Commission Water Pollution Control Program**

### **Meeting Minutes**

**February 26, 2003**

**MISSOURI CLEAN WATER COMMISSION MEETING**  
**February 26, 2003**  
**DNR Elm Street Conference Center, Jefferson City, Missouri**

**MINUTES**

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission  
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission  
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission  
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission  
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission  
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

M. Ali Almai, Kansas City Water Department, Kansas City, Missouri  
Troy Bolinger, Clarksburg, Missouri  
Don Boos, Department of Natural Resources, Jefferson City, Missouri  
Buck Brooks, Department of Transportation, Jefferson City, Missouri  
Marie Collins, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Rowena Conklin, Platte County Commission, Prairie Village, Kansas  
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri  
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri  
Cindy DiStefano, Department of Conservation, Columbia, Missouri  
Nonie Dudley, USDA Rural Development, Columbia, Missouri  
Denise Evans, Department of Natural Resources, Jefferson City, Missouri  
Keith Forck, Department of Natural Resources, Jefferson City, Missouri  
Mark Frazier, US Army Corps of Engineers, Kansas City, Missouri  
Scott Hamilton, Department of Natural Resources, Jefferson City, Missouri  
John Howland, Midwest Environmental, Jefferson City, Missouri  
Jim Hull, Director of Staff, Missouri Clean Water Commission  
Malinda King, Acting Secretary, Missouri Clean Water Commission  
Richard Laux, Department of Natural Resources, Jefferson City, Missouri  
Jim Lunan, Holcim, Bloomsdale, Missouri  
Melissa Manda, Department of Natural Resources, Jefferson City, Missouri  
Colleen Meredith, Department of Natural Resources, Jefferson City, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri  
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri  
John Reeves, City of St. Charles, St. Charles, Missouri  
Joy Reven, Department of Natural Resources, Jefferson City, Missouri  
Mark Rhoads, City of St. Joseph, Jefferson City, Missouri  
Fritz Ritter, Lake Region Water and Sewer Company  
Chris Roepr, Senator Shields' Office, Jefferson City, Missouri  
Steve Schlueter, City of Jefferson, Jefferson City, Missouri

Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri  
J. D. Schuenemeyer, Department of Natural Resources, Jefferson City, Missouri  
Carrie Schulte, Department of Natural Resources, Jefferson City, Missouri  
Scott Schwant, Department of Natural Resources, Jefferson City, Missouri  
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri  
Melissa Shiver, Department of Natural Resources, Jefferson City, Missouri  
Robert Thetge, City of Purcell, Purcell, Missouri  
D. Clark Thomas, USDA Rural Development, Columbia, Missouri  
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri  
Steve Townley, Department of Natural Resources, Jefferson City, Missouri  
Gayle Unruh, Department of Transportation, Jefferson City, Missouri  
Roger Walker, Armstrong Teasdale, St. Louis, Missouri  
Rick West, Sprengle & Associates, Inc., Carl Junction, Missouri  
Scott Williams, Department of Natural Resources, Jefferson City, Missouri  
Bob Williamson, Water Services, Kansas City, Missouri  
Diana Wright, City of Harrisonville, Harrisonville, Missouri

Chairman Herrmann called the meeting to order and introduced Vice-Chairman Minton, Commissioners Kelly, Perry, Greene and Easley; Director of Staff Jim Hull; Acting Secretary Malinda King, and Assistant Attorney General Deborah Neff.

### **Administrative Matters**

#### **Adoption of January 15, 2003 Conference Call Minutes**

Commissioner Perry moved to **approve the January 15, 2003 Conference Call minutes** as submitted by staff; seconded by Commissioner Greene and unanimously passed.

#### **Adoption of January 29, 2003 Commission Meeting Minutes**

Commissioner Greene moved to **approve the January 29, 2003 Commission Meeting Minutes** as submitted by staff; seconded by Commissioner Perry and passed with Commissioner Greene abstaining.

#### **Final Action on Proposed Fiscal Year 2004 Clean Water State Revolving Loan Fund Intended Use Plan and State Grant and Loan Priority List**

Carrie Schulte, Water Pollution Control Program Financial Services Section, reported on the Leveraged Loan Program by first reviewing the Source of Funds chart in the Intended Use Plan (IUP). She then reviewed the comments received during the comment period.

- Staff commented in the public hearing that the City of Highlandville's phase II project should be moved from the 40% Grant Contingency list to the Leveraged Loan list because of the policy not to award two 40% grants to the same entity. Highlandville is now shown on the Leveraged Loan Contingency list.
- Kansas City's project was on the Leveraged Loan Contingency list but Kansas City hoped to be on the fundable list after the commission considers project bypassing of other projects in September. Kansas City committed to continue with design and all other project requirements so that the project could be included in the fall closing. The community's position is in accordance with the bypass procedures in the Intended Use Plan so no staff response is necessary.
- Phase 4 of Kirksville's wastewater program appears in the source of funds chart and will close on a \$1.4 million loan as part of the April 2003 SRF Leveraged Loan closing. It will be bypassed if the loan is not secured in April. The remaining \$2,567,000 (phase 6) of Kirksville's total request now appears on the New Project Fundable list.
- Staff determined that Cleveland's application was not late. The community was notified that their project has been placed on the Leveraged Loan Contingency list.
- Oak Ridge requested and has been moved from the Leveraged Loan Fundable list to the 40% Contingency list.
- LaPlata requested reevaluation of their priority points. Reevaluation raised their priority by 10 points but the project remains on the Leveraged Loan Contingency list.

Commissioner Minton asked if staff was able to grant any relief to Kirksville as the community requested.

Ms. Schulte responded Kirksville will do an interim loan so they can secure the necessary loan and pick up with a leveraged loan later.

Ms. Crawford, Water Pollution Control Program Financial Services Section, first reported on the Infrastructure Grant list.

- Branson West commented that they wish to comply with the more stringent phosphorus limit and that they hope to receive grant funding. Branson West is still on the Special Infrastructure Grant Contingency list. Some recoveries have been made and staff is anticipating having \$540,000 federal money available. Staff will do everything possible but funding is limited.

Commissioner Perry asked if the \$540,000 will be given to the community or if the entire amount needed has to become available.

Ms. Crawford replied staff will offer the money to the community and work with them to get the project funded.

Comments received during the comment period on the Forty Percent Grant list included the following.

- Camden County Sewer District requested reevaluation of their priority points. Additional information submitted included the addition of Cedar Glen Condominiums with 300 units. The priority points increased from 45 to 122 making the project fundable.
- Phelps County PWSD #4 requested their priority points be reevaluated and submitted additional information. Additional water quality data raised the priority points from 48 to 111 and the project is now fundable.

Commissioner Perry asked if this moves another project off the fundable list.

Ms. Crawford replied Fremont Hills is not fundable due to the change in the Phelps County PWSD priority points.

Commissioner Minton asked if the applicants are notified when they fall off the list so they can request reevaluation of their priority points.

Ms. Crawford responded staff reevaluates the priority points as long as the applicant comments within the comment period. Applicants are notified when there is a potential that they will drop off the list. If the applicant doesn't ask until the last day to be reevaluated, there is not enough time remaining. Ms. Crawford noted a reevaluation will not be done if there is no additional information to submit.

- Highlandville was moved off the Forty Percent Grant list for phase II. Phase I has been bid and will be awarded.
- Pineville requested that their points be reevaluated. Their points raised but did not get them into the fundable range. Pineville is now first on the Forty Percent State Grant Contingency list. Staff will work with the community by offering any monies recovered.

Commissioner Perry asked if the carryover and new projects have two separate point systems.

Ms. Crawford responded this is correct. If a project is shown as fundable, this occurs for two consecutive years. Staff has gotten much more precise with the point system and everyone is on a level playing field now but money is not available.

- Oak Ridge requested to be placed on the Forty Percent Grant list even though the project is not fundable. Ms. Crawford stated this is a very small community that could not afford a leveraged loan and staff has complied with this request.
- Highlandville was moved off the list because they already have a Forty Percent Grant for phase I.

Responding to Chairman Herrmann's question, Ms. Reven of the Water Pollution Control Program Financial Services Section, stated Neck City applied only for a collection system. When the priority points were evaluated, the project was evaluated just on the basis that this is a collection system. They are currently on septic tanks and there was no water quality data to review. The community was going to build a collection system and put the waste through the Purcell plant when it gets built.

Ms. Crawford noted the system is not set up for evaluating the unsewered communities.

Chairman Herrmann stated if the waste is going to go to Purcell eventually, that will enhance regionalization and should be given reasonable consideration particularly with the geology in that part of the state.

Ms. Crawford stated the commission could make a determination that special priority should be given to the project.

Commissioner Minton asked if this is done on a case-by-case basis.

Ms. Crawford stated it is done case-by-case and was done recently for Arrow Rock. It has been done before but this action would knock someone else off the list.

Ms. Reven stated Neck City and staff believe they are a hardship community but the census data does not support this belief. The collection system is extremely expensive for such a small community due to the geology and the mining that has been done in the area.

Chairman Herrmann asked if the community is working toward reconsideration of the census data.

Ms. Reven replied they have contacted the Census Bureau and worked with them.

Commissioner Perry asked what the problem is with the Census data.

Ms. Reven replied the Census data shows zero unemployment in the area and that is not correct.

Ms. Crawford reported on the Hardship Grant and Loan Program.

- Washington County Water and Sewer District No. 1 felt their median household income was too high and they were going to supply new census data. Ms. Crawford stated Washington County Public Water Supply District minimum required user charge is \$45.19. Staff can only give a grant to make their user charge \$45.19 if funding was available. They believe it should be lower and are saying that the census data was wrong on their median household income. Once staff receives a reevaluation from the Census Bureau, they can change the user rate but they still won't be fundable.
- The City of Blairstown requested that their project be moved from the contingency list to the fundable list. Blairstown is on the contingency list below Ionia with 41.76 priority points. Unless the commission determines special priority, sufficient funds are not available to fund the Blairstown project.
- The Village of Diggins requested that its project be placed on the Special Infrastructure Grant list and that it be moved from the Hardship Grant list to the Forty Percent Grant list. After priority point reevaluations, Diggins was not reachable on the Forty Percent Grant list. Staff was able to partially fund the project on the Hardship Grant list. Diggins should be listed on the Hardship Grant list for \$1,045,071 with a zero balance in that fund. The project remains on the Hardship Grant list after reevaluation.

Chairman Herrmann asked if Diggins is able to proceed at that level of funding.

Ms. Crawford responded Rural Development believes they will be able to complement the \$1 million plus and get a project going.

- Purcell requested to be retained on the Hardship Grant list. Staff is trying to work with Neck City and build what Purcell currently needs. The plant can be expanded later if Neck City can be funded. Purcell is retained on the fundable list and the plant will be built in a way to expand for Neck City if they are able to get funding.

Chairman Herrmann asked what the population of Neck City is.

Ms. Reven responded the Census says 119 but Neck City believes there are 220.

- The City of Ionia requested that they be placed on the Hardship Grant Fundable list rather than the Contingency list. Staff hopes to have funds from recoveries to put toward this project.

Ms. Crawford reported the Direct Loan and Nonpoint Source Loan Program list was revised to show three fundable projects since these projects require Forty Percent Fundable grants of which there are three.

Commissioner Minton moved to **accept the staff recommendation** regarding the FY 04 Clean Water State Revolving Loan Fund Intended Use Plan and State Grant and Loan Priority List; seconded by Commissioner Kelly and unanimously passed.

### **Other**

Jim Hull, Director of Staff, reported that Steve Townley will be working under contract with the Environmental Improvement and Energy Resources Authority as of March 1 on SRF and other issues. He continued that a lot of progress has been made with the SRF under Steve's leadership. Ann Crawford will be Acting Section Chief until the position is refilled.

Chairman Herrmann noted it's been a pleasure to work with Steve over the years and thanked him for everything he has done for the commission.

### **Storm Water Grant and Loan Recommendations for First Class Counties and MSD**

Ms. Crawford provided revised information and reported since staff has been informed they will no longer be able to sell bonds they have further evaluated the best use of the remaining \$10 million. Ms. Crawford recommended splitting the remaining funds between grants and loans with \$4 million for grants and \$6 million for loans. She asked that the commission approve allocation of these funds and eligible applications. The county stormwater committees and the cities over 25,000 population will then tell staff which projects should be funded under the \$4 million cap.

Commissioner Perry asked how it is then allocated between the cities.

Ms. Crawford explained it will be allocated by population. She continued it doesn't matter if applications have been received; staff has to offer the money by statute.

Chairman Herrmann asked what the significance is of turning the money down.

Ms. Crawford replied the regulation is written so that every time there are excess funds, they are added back in and reoffered next year.

Responding to Chairman Herrmann's question, Ms. Crawford stated Camden County might have a problem in finding matching funds.



Commissioner Perry asked why the money was split as it was and if the loan money would not be spent since there were not many loan applications.

Ms. Crawford responded she believes a lot of the money will be spent. She concluded that the criteria for the split was a management decision.

Ali Almai, Kansas City Water Department Stormwater Division, stated the city is in favor of the grant and loan combination since they need the loan to match the grant for the projects in the Kansas City area.

John Reeves, City of St. Charles, reported St. Charles has a stormwater application for \$164,000 under consideration for the Jackson Street storm sewer. For FY 2003, St. Charles plans to spend around \$1.4 million on stormwater improvements of which \$495,000 is for the Jackson Street project. Mr. Reeves continued that the proposed cuts in the grants would pull funding from several other projects to make up for the shortfall on Jackson Street. He stated the other projects get postponed for a year or more until funding becomes available and it is not cost effective to pursue loans based on the expenses associated with bonds. The city has identified 51 future stormwater projects totaling approximately \$8-10 million and Phase II stormwater requirements will create a need for more funding. Mr. Reeves noted the city is committed to stormwater improvement and asked that the \$10 million remain available.

Marie Collins, Metropolitan St. Louis Sewer District, encouraged the commission to utilize the \$10 million for the grant program versus the loan program. Ms. Collins stated the current proposed spending is about \$1.4 million which is a reduction of \$2.4 million that MSD had planned on using. St. Louis has 24 municipalities that will share in this grant program along with the MSD and St. Louis County. Eleven of these have a population base of less than 5,000 people and loss of grant monies to these communities is very significant. Ms. Collins continued that the loan program indicates about \$2 million has been set aside for the St. Louis metropolitan area. She stated MSD does not have bonding capability which is taking the money away from the area completely. Other municipalities that do have bonding capability can sell bonds to generate loans for the loan program. There is no other source of revenue for the grant program for these small municipalities in the St. Louis area. Ms. Collins requested that the entire \$10 million be placed into the grant program.

Mark Rhoads, City of St. Joseph, stated the city has three major projects. Buchanan County and St. Joseph requested \$201,000 and that amount is now \$77,000. Mr. Rhoads asked the commission to consider ongoing projects when making its decision.

Steve Schlueter, City of Jefferson, reiterated the request for grant versus loan funds. He noted the funding cut severely hampers the city's stormwater efforts.

Rowena Conklin, Platte County Commission, reported the \$1.2 million project in Platte County is to replace a bridge servicing 150 homes. A \$100,000 grant was received last year

and another \$100,000 was applied for this year. Ms. Conklin requested that the \$10 million remain in the grant program.

Mr. Hull stated no bonds will be sold in FY 04 and staff is not sure when bond sales will resume due to the financial condition of the state. The recommendation to devote the majority of the amount available towards the loan funds is considered a prudent recommendation. Mr. Hull noted these are difficult times and grants are much more attractive than loans but this recommendation is made to continue the program for a period of time.

Chairman Herrmann noted not being able to take advantage of loan funds because of not having bonding capability is a serious problem.

Commissioner Minton asked what the repayment rate is if the thought behind the split was that money will be coming back in from the loans to generate future funding.

Ms. Crawford replied it is an annual basis.

Commissioner Minton asked how much revenue is generated annually.

Ms. Reven responded there have been approximately \$8 million in loans closed on last fall. One twentieth of \$8 million would be the maximum when all the loans coincide.

Commissioner Minton asked what rate of interest would be generated.

Ms. Reven replied there is a one-half percent administration fee and between 1.7 and 1.6 percent in addition to one-half percent.

Commissioner Minton asked if the generation of revenue as a result of loans is going to bring in enough to actually fund anything in the future.

Ms. Reven replied the original vote was for \$100 million in loans and \$100 million in grants and the original thought behind that bond sale was the \$100 million would be in circulation.

Ms. Crawford noted staff anticipated that most would come in 50% grant/50% loan. Because of the amount of money that is offered each year, and the fact that they have to have bonds, people have not historically asked for loans.

Mr. Hull asked how much of the original \$200 million has been awarded for grants and for loans.

Ms. Reven replied there has been \$7.7 million made in loans and \$29.6 million in grants will be made.

Mr. Hull stated even though staff has stayed within the framework of the appropriation, the original thought was 50% to each program and it is skewed toward the grant side.

Chairman Herrmann noted the recommendation is to swing much more heavily toward the loan side and if many of the counties or municipalities can't bond to accept the loan funds, then this is severely limiting their capability.

Commissioner Perry asked if the commission would be doing something unconstitutional by splitting the funds in some other manner.

Ms. Crawford acknowledged it did require a 50/50 split. She stated if you look at it on an appropriation basis, staff will not exceed \$40 million in grants.

Commissioner Perry noted no one wants the loans because they don't have bonding capacity.

Ms. Crawford responded MSD can't vote a bond district wide. For other municipalities, it costs money to run a bond election and they believe it is not cost effective for the amount of money they would get in a loan.

Commissioner Minton asked if the split is about 70/30 grant versus loans.

Ms. Reven explained that the problem is that the cash is not the same as what has been appropriated. \$48 million in cash has been given and of that \$29 million was given previously in grants and almost \$8 million was given in loans. There is about \$10 million remaining and the issue is whether or not to take this \$40 million appropriated/\$40 million to be spent on grants or \$33 million spent on grants and \$14 million spent on loans. Either way staff stays below the 40/40 limits.

Commissioner Greene asked if there will be no more grants if all \$10 million is used for grants now.

Ms. Reven replied unless another appropriation of 10 and 10 is given that is correct. If that would occur, any cash could be filtered to that.

Ms. Crawford noted a bond sale corresponding to that appropriation has to be held. Cash has always been based on projections of construction so there is not a big balance not being spent.

Commissioner Perry asked if it is up to the legislature on whether or not to appropriate the original allocation of \$200 million and if there is a likelihood that the remainder of the money will be appropriated.

Ms. Reven replied, if the economy turns around, there will be a sale in 2005 which would be FY 2006. She continued until MSD can vote bonds, they will always be on the short end. Chairman Herrmann noted it's not only MSD that has difficulty with the bonds.

Ms. Reven replied that is true; it's extraordinarily expensive to borrow money.

Commissioner Greene said realistically this is all the grant money for some time and everybody understands that. She asked if the projects were told early on that they were to get a certain amount.

Ms. Reven responded staff looked at the balance of the appropriations in August and offered \$29 million in loans and \$10 million in grants. Applications were received for the \$10 million in grants but only \$3 million in loans.

Commissioner Minton asked if the 70/30 split would satisfy the loan applications.

Ms. Reven replied the \$6 million would have to be prorated based on the 2000 census where before \$29 million was offered and the \$6 million would not be enough to fund some of the applications.

Ms. Crawford noted the formulas have to be run through every time a certain amount is applied.

Ms. Reven stated it would be one-fifth of what they were offered so there would likely be applications for one-fifth of a little under \$3 million.

Commissioner Perry asked if the staff recommendation would change in light of the statements made today by the majority of the speakers.

Ms. Crawford replied the staff recommendation is based on direction from management and perpetuity of the funds.

Mr. Townley stated based on a 70/30 split of the \$10,257,000, there would be approximately \$7.2 million of grant monies available and a little over \$3 million in loan monies. Regarding the repayment question on a \$14 million loan portfolio, the maximum annual repayment that would be expected is \$735,000 annually. A loan program sized to \$8,700,000 would have repayments of approximately \$435,000 a year, principal only, interest on top of that.

Commissioner Minton asked if money coming back from repayment of a loan can be reissued for grants and loans or if it has to be used for loans.

Ms. Reven replied it has to always remain in the loan fund because that has to be a fund into perpetuity.

Commissioner Perry asked if there is any other purpose for which these funds may be accessed if they are held back.

Mr. Townley replied the Constitution is very narrow and specific in its intended purposes and he did not anticipate that these funds could be used for anything else.

Commissioner Perry noted there are mandatory fee funds that are now going back to General Revenue.

Mr. Townley replied that there is a bill in the legislature this year that is proposing to sweep funds. The one-half percent added on to the loans to pay administrative staff is not proposed to be swept in that bill. Mr. Townley noted he has a concern with a technical issue because it sweeps the entire fund. The fee funds established in Section 644 are not mentioned specifically so he assumes they are exempt.

Commissioner Perry asked what is the potential that the money will be lost if it is held back.

Mr. Townley replied he could not project that.

Chairman Herrmann noted there would be about \$400,000 annually coming in from the total amount of loan funds which is not enough to sustain a program.

Commissioner Greene noted since the repayment of the loans cannot be used for grants next year, the \$10 million might as well be used now for the projects.

Commissioner Minton noted if all the loan money is used this year, that will impact the Kansas City projects since they can use loan money.

Commissioner Perry asked if Kansas City could get more loan money if loans are still available.

Ms. Reven responded, if they were offered \$10 million in grants alone, they would get \$1.2 million in grants but the city has to match this which is why they prefer loans. The city has entered into two loans already and their cash flow is such that the match can come from anywhere. They would rather borrow their match so it would cause problems for the city.

Commissioner Perry asked if Kansas City could not get, or could not afford, enough of a loan to match the grant.

Ms. Reven replied the city would have to get their loan from somewhere else if the state did not offer it to them. Kansas City would only get a portion of whatever is left since the ratio on population has to be applied.

Responding to Commissioner Minton's question, Ms. Reven replied no matter what the amount, once it is offered, it has to be offered based on the first class county census. If there is \$2 million to offer, Kansas City can only get their percentage of the population of Jackson, Platte and Clay County's share.

Commissioner Minton asked what happens to the money not used on the loan side if a portion of the money is allocated for loans and no one can utilize them except Kansas City.

Ms. Reven responded the money will be used the next year.

Responding to Commissioner Perry's question, Mr. Almai stated Kansas City likes to get as much grant money as possible but they also want the loan to go with it. He noted other entities would have the same problem.

Ms. Conklin stated the Platte County bridge project is from bonds but the county had anticipated until yesterday that they would receive the \$100,000 grant to finish the project. She thought that most of the counties do not use grants and loans. Programs have been predicated on the grants the counties believed they would receive. Ms. Conklin stated to cut them to put into a loan program that can never be accessed for grant programs because the money cannot go back into that grant fund would mean that there is no alternative but for those entities to try to borrow these funds. They may have access to other sources of funding other than the stormwater control funds. Ms. Conklin stated it would seem logical to continue the program as it was originally intended and look to the future. She continued that all counties are suffering from the sweep of funds and to have something else taken away that was not anticipated when they applied for the monies is pulling the rug out from under them. She suggested going ahead with the grants that were already moving forward.

Commissioner Perry noted the commission has always been responsible for trying to do what will impact the environment in the most positive and immediate way. Another reason to do this is to stop some pollution now rather than saving money to loan in the future.

Commissioner Minton noted it has been stated twice that this was a management decision and asked who management is. He noted staff have stated they prefer grant programs and he would like to feel like the commission is doing the right thing and addressing the issues as best they can.

Scott Totten, Water Protection and Soil Conservation Division Director, reported the Constitution states 50% of the funds are to be used for loans and 50% are to be used for grants. The program is based on annual appropriations of \$20 million with allocations of \$10 million for grants and \$10 million for loans. Mr. Totten noted the department is now on a cash only basis, not an appropriation basis, because of information from the Office of Administration that no more bonds would be sold as long as the State of Missouri is in this

financial situation because these bonds are backed by General Revenue of the state and annual payments are made on these. He continued that it costs the state a lot of money to issue these bonds and pay off the debt. While budgets are being cut, this is a big-ticket item. The Office of Administration could not see the state issuing more bonds for this program as long as the current financial situation exists. Mr. Totten continued that the documents that were put out were predicated on receiving the cash to back the appropriations. When it was determined that the department had to live within the cash that's available, he asked if the rules of the game shouldn't change so that if the only cash available is \$10 million, rather than 50% going out as grants and 50% going out as loans. Should we try to change that a little bit and go with a 60/40 split? His recommendation to staff was that it should be proposed to the commission that this be looked at and discussed and let the commission decide how they wanted to do this program with the \$10 million remaining. Mr. Totten commented this is realizing that what is decided today will be it for a while. Even when 60% of the \$10 million goes out as loans, \$700,000 per year is not much of a loan program for the future, but it's \$700,000 toward some problem which for the next two years, there probably won't be any grant funds for.

Commissioner Perry asked if management changes its 60/40 position in light of the discussion held today.

Mr. Totten responded this is the commission's decision to make from the staff recommendation that was made.

Commissioner Perry asked for Mr. Totten's recommendation.

Mr. Totten responded it isn't fair to these communities but the budget situation hasn't been fair to many people at this point in time. This is a recommendation based on management's discussions with staff and it is the commission's decision to make, not a department decision.

Commissioner Minton stated that is why he asked what the thought process was to get to this recommendation.

Mr. Totten replied you would normally see an allocation based off of \$10 million for grants and \$10 million for loans. There have been allocations of \$10 million for loans for several years and staff have only given out \$8 million total worth of loans. As long as there is free money (grants) available, no one wants a loan. Mr. Totten stated at some point in time the \$100 million in grants will be spent and all that will be available is \$100 million for loans. There are appropriations that can be spent either way and this is a recommendation to balance to date awards by putting more loans out there. Mr. Totten agreed that \$700,000 per year is not much for future years however.

Commissioner Minton asked if the commission could notify applicants that the commission would steer money back toward loans rather than the 50/50 split if bonds are again sold in

2005 for 2006. He noted applicants need to realize the split will be the other way until there is a better balance.

Mr. Totten noted this does catch people short right now.

Commissioner Perry noted they would have more notice to do their planning and immediate projects could be taken care of.

Mr. Totten stated the City of Springfield is not present but they have borrowed money on a short-term basis anticipating a continuation of grants for the next five years to buy out some homes in a flood prone area and they are very distraught over not having the original grant allocation.

Chairman Herrmann stated the entire loan fund is not enough to sustain a program and the commission is at the mercy of the economic status of the state either way. Putting most, if not all, of the money in grants could complete construction that has already begun or programs that are already planned benefiting the communities and the environment today not sometime in the future if monies are available.

Mr. Totten noted phase II stormwater comes into play and this was an opportunity to provide assistance in that area. This is an unfunded federal mandate on the local communities and the state administration of the program. Mr. Totten reported a lot of states are looking at giving some of these responsibilities back to the federal government but many states do not have a state program where bonds have been passed for improvements in these areas. Mr. Totten stated the administrative level within the Department of Natural Resources revisits this issue almost on a daily basis as the Legislature and the Office of Administration look at how much money is coming into the state, determines how much money needs to be withheld from the state budget in 2003, and how much money is available for 2004. He concluded that it might be some time before this program gets any cash after this \$10 million is spent.

Commissioner Greene moved **to place the \$10 million into the grant funds in order to continue the projects that are ongoing**; seconded by Commissioner Kelly and passed with the following vote: Commissioner Greene: Yes; Commissioner Kelly: Yes; Commissioner Minton: Yes; Commissioner Perry: Yes; Commissioner Easley: No; Chairman Herrmann: Yes.

#### **Update on Phosphorus Grant Projects**

Mr. Crawford reported Clever, Crane, Galena, Reeds Spring and Sparta did not apply for phosphorus related grants.

Chairman Herrmann asked if the communities who did not apply have been notified that they will be required to have phosphorus removal in place.



Ms. Crawford indicated they have been notified. There is approximately \$541,000 of these grant funds remaining which will be available to Branson West.

Commissioner Perry asked if staff knows why the five communities have not applied for funds.

Ms. Crawford replied she does not know specifics but it could be that they are not able to match the funds. Staff will be working with them to do this work.

### **Enforcement Referrals**

#### **Bolinger Swine Operation**

Mr. Mohammadi reported that Bolinger swine facility is an animal feeding operation owned and operated by Mr. Tony Bolinger consisting of a breeding and gestation unit with a farrowing house located in Cooper County. Swine wastes are removed from the buildings using recycled flush water and transported to a one-cell anaerobic lagoon via 8" diameter pipe. Land application is by sprinkler on approximately 40 acres of grassland. On April 30, 1997, due to over-application, liquid swine wastes from the facility discharged into an unnamed tributary of Panther Creek severely polluting approximately one mile of stream and precipitating a fish kill. Also, on December 19, 1997, liquid swine wastes again had been discharged into an unnamed tributary of Pisgah Creek from the operation. On March 4, 1998, Mr. Bolinger entered into a Settlement Agreement with the department to resolve the violations of the Missouri Clean Water Law. Another spill, due to over-application of liquid swine wastes, occurred at the operation on August 19, 1998. This spill adversely affected an unnamed tributary to Pisgah Creek and an unnamed tributary to Panther Creek and was caused by over-application.

Mr. Bolinger failed to meet the conditions of the Settlement Agreement and the matter was referred to the Office of the Attorney General on December 7, 1998. On August 14, 2000, a Consent Judgment was entered by the Cooper County Circuit Court to resolve the problems caused by all three spills. Mr. Bolinger paid civil penalties, investigative costs and fish kill costs in installments over a one-year period. Mr. Bolinger indicated he was quitting the hog business and leased the facility to Mr. Loganbill. The case was resolved with Mr. Bolinger on September 5, 2001.

Mr. Bolinger again took over the operation because Mr. Loganbill broke his lease agreement. On September 14, 2002, due to a clogged concrete sump located between the hog barns and the waste lagoon, liquid swine wastes were discharged from the Bolinger Swine Operation into an unnamed tributary to Pisgah Creek for approximately one-half mile. Grab sample analysis of in-stream samples indicated acute levels of ammonia.

Mr. Mohammadi recommended referral of the matter to the Office of the Attorney General for appropriate action.

Tony Bolinger, Bolinger Swine Operation, acknowledged Mr. Mohammadi's statements were true and he had done the best he could for the situation he was in. He explained this is a two-inch pump running into the hog barn one-quarter mile from the creek on top of a hill. The line has cleanouts for when it becomes plugged and it became plugged when Mr. Bolinger was away from the operation. Mr. Bolinger explained he went to the creek to pump the water out but found no water so he did nothing and a DNR representative came out several days later and said the problem had resolved itself. Mr. Bolinger stated he spent \$4,000 on an irrigation system he did not have the money for to comply with the law.

Responding to Chairman Herrmann's question, Mr. Mohammadi stated the facility is under a Letter of Approval.

Commissioner Minton asked if staff have tried to negotiate with Mr. Bolinger on this last episode or if the referral is being requested due to past problems at the operation.

Mr. Mohammadi responded the problem is that this facility has had chronic releases since 1997 and the terms of the Settlement Agreement have been violated. Staff had to refer the matter for breach of contract and the Attorney General's Office had to get a court order for Mr. Bolinger to comply with the terms of the Settlement Agreement. Mr. Mohammadi stated staff wants a court order that addresses issues permanently so it does not have to come back before the commission.

Commissioner Kelly asked if the system is fixable so these events are not repeated.

Mr. Mohammadi replied NRCS can provide engineering assistance to design a system that DNR will review and approve if the design is approvable. A construction permit is then issued and an operating permit also has to be obtained. Mr. Mohammadi noted just building the facility and having an operating permit does not take care of the problem of improper operation of the system.

Mr. Bolinger noted he is doing the best he can with what he has to work with.

Chairman Herrmann asked if the irrigation system is covered under the current permit and if the rates of application are agronomic rates.

Mr. Mohammadi acknowledged it is under the Letter of Approval. He continued that a Letter of Approval is not very specific.

Randy Clarkson, Chief of the Water Pollution Control Program Engineering Section, replied land application rates are typically a part of the Letter of Approval but the program has a lot of flexibility. The irrigation equipment could be changed without any problem.

Commissioner Greene asked how many gallons were spilled during the last event.

Mr. Mohammadi replied it's difficult to estimate but it wiped out one-half mile of stream. He continued that there have been so many events that the stream no longer supports fish.

Commissioner Easley asked if overflow lagoons would correct the problem.

Mr. Bolinger responded they are holding pits that need to be built in case of a spill.

Commissioner Perry asked if Mr. Bolinger had contacted his ASC office for assistance.

Mr. Bolinger replied he has not been able to find a program to help his hog operation.

Commissioner Greene asked how long Mr. Bolinger had been back in control of the operation before the last spill occurred.

Mr. Bolinger replied probably less than 30 days.

Chairman Herrmann asked if it is possible to get someone to act as go-between for Mr. Bolinger and NRCS.

Mr. Mohammadi stated this assistance was available before and it is still available.

Mr. Bolinger stated he will do his best to make it work.

Commissioner Kelly stated regardless of Mr. Bolinger's financial problems his good intentions have not worked in the past.

Chairman Herrmann noted he concurs and sees no problem with referring the matter so that a court order outlining what Mr. Bolinger must do can be developed. Assistance from the Outreach and Assistance Center and NRCS can help Mr. Bolinger comply with the court order.

Commissioner Greene noted she would like to see more time to work the issue out since Mr. Bolinger just recently took over the operation.

Commissioner Easley noted building several overflow ponds could be done in a short time and asked if that would satisfy the problem.

Mr. Mohammadi stated he appreciates the financial difficulties Mr. Bolinger has but it is very important for him to understand that there is no provision in the law that says if you do not have money you can violate the law. He concluded that Mr. Bolinger has to hire an engineer to design a system for DNR to review and approve.

Commissioner Perry asked if Mr. Bolinger would have to go through the permit process to install containment ponds.

Mr. Mohammadi replied the Letter of Approval terminates once a discharge occurs. He continued that Mr. Bolinger agreed with the terms of the Settlement Agreement and then violated those terms so allowing more time would just be repeating what has already been done.

Mr. Bolinger noted when he agreed to pay the costs he was told that would wipe the slate clean and asked if that is not the case. He continued that DNR gave him the Letter of Approval and suggested the commissioners go to any chicken farm in the state and look at what's in the creek. Mr. Bolinger stated they don't get any flack while he hasn't put enough water in the creek to matter.

Mr. Mohammadi stated when the original spill occurred in 1997, a Settlement Agreement was entered into whereby Mr. Bolinger was required to obtain a permit. The department did not pursue this because Mr. Bolinger said he was going to go out of the hog business. The operation was then leased and that operator had a problem that staff dealt with. Mr. Mohammadi said Mr. Bolinger now has the operation back and he still believes he is operating under the old Letter of Approval.

Chairman Herrmann noted the Letter of Approval says no-discharge and that is the crux of the matter. He noted referral to the Attorney General's Office along with assistance in redesigning the system so the overflows don't continue might be what is needed.

Commissioner Perry moved to **refer the Bolinger Swine Operation to the Office of Attorney General for appropriate legal action and requested that the Outreach and Assistance Center and NRCS provide assistance to Mr. Bolinger**; seconded by Commissioner Kelly and passed with the following vote: Commissioner Minton: No; Commissioner Perry: Yes; Commissioner Easley: Yes; Commissioner Greene: Abstain; Commissioner Kelly: Yes; Chairman Herrmann: Yes.

Commissioner Minton encouraged Mr. Bolinger to contact his local NRCS office where there are cost share funds for projects similar to his as well as for terraces to divert water from the site to the lagoon that is presently located on the operation. Commissioner Minton noted the state NRCS office in Columbia will help find out why he has not been able to get assistance at the local level.

Commissioner Kelly commented that it is regrettable that DNR did not at some time offer Mr. Bolinger suggestions for solving his problems so that this issue would not have to have gone this far.

Deborah Neff, Assistant Attorney General, replied that she handled the Settlement Agreement and the lawsuit and did not deal directly with Mr. Bolinger but that information was given to his attorney several years ago. Ms. Neff noted when individuals get into difficulties the first thing DNR does is to tell them NRCS can assist them.

Mr. Bolinger stated he was not given any information.

Mr. Mohammadi noted NRCS, University Extension, and the engineering firm that designed the system were copied on Mr. Bolinger's Letter of Approval.

### **Ledbetter Mobile Home Court**

Mr. Mohammadi reported Glen Ledbetter is the owner and operator of Ledbetter Mobile Home Court, located in Ralls County which contains approximately twenty-five mobile homes. The Ledbetter Mobile Home Court is served by a single cell wastewater treatment lagoon. The receiving stream is an unnamed tributary to Bear Creek.

The department issued Ledbetter Mobile Home Court three Notices of Violation, for failure to upgrade the wastewater treatment facility (WWTF) as required in part C of its Missouri State Operating Permit and failure to properly operate and maintain the WWTF. The Missouri State Operating Permit contained a schedule of compliance requiring Mr. Ledbetter to submit an engineering report to the Department by January 1, 1999. The engineering report should evaluate the WWTF capability to meet current effluent limits and make recommendations to upgrade the WWTF as necessary. If WWTF upgrades were necessary then, submit plans and specifications for the upgrades by April 1, 1999; begin construction by July 1, 1999; and complete construction by July 1, 2000. Although the department granted Mr. Ledbetter several extensions he failed to meet the deadlines or complete any of the activities outlined in Part C of the Missouri State Operating Permit.

On July 20, 2000, Mr. Ledbetter proposed to the department to connect to an available sewer district in lieu of constructing a new WWTF. The department agreed providing he submit a copy of the agreement with the City of Hannibal and/or the Ralls County Public Water Supply District #1 (PWSD) approving the connection of the wasteload from Ledbetter Mobile Home Court. Mr. Ledbetter entered into an agreement with the Ralls County PWSD #1 on October 4, 2000 to take over the operation of the WWTF. This agreement was then terminated by the Ralls County PWSD #1 in December 2001, because the former PWSD president had made the agreement without the consent of the entire PWSD. Since then, Mr. Ledbetter has been unsuccessfully pursuing an agreement with the City of Hannibal.

A Settlement Agreement between the department, the AGO and Mr. Ledbetter was fully executed on January 10, 2002 to resolve the Missouri Clean Water Law violations. The Settlement Agreement required Mr. Ledbetter to upgrade or replace the WWTF in accordance with the approved construction permit. To date Mr. Ledbetter has yet to submit

an agreement with either Hannibal or the Ralls County PWSD #1 or comply with the terms of the Settlement Agreement.

Mr. Mohammadi recommended referral of the matter to the Office of the Attorney General for appropriate legal action.

No one was present representing Ledbetter Mobile Home Court.

Commissioner Minton moved to **refer the Ledbetter Mobile Home Court to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Kelly and passed with the following vote: Commissioner Perry: Abstain; Commissioner Easley: Yes; Commissioner Greene: Yes; Commissioner Kelly: Yes; Commissioner Minton: Yes; Chairman Herrmann: Yes.

Commissioner Perry asked that the department take some action with the Ralls County Public Water Supply District and/or the City of Hannibal to ultimately save the environment. She continued that the politics in those organizations is overwhelming and no one is watching out for the environment.

Mr. Mohammadi stated he contacted the City of Hannibal since the PWSD indicated they would not be able to provide service to the mobile home court. The city changed its ordinance to provide service to Mr. Ledbetter and what remains is for Mr. Ledbetter to submit engineering plans and specifications for review and approval so a construction permit can be issued.

#### **Update on Lake Region Water and Sewer Company**

Mr. Mohammadi reported staff has met with Mr. Ritter and his counsel and made significant progress. Staff anticipates being able to reach agreement and Mr. Mohammadi recommended tabling the item until the next commission meeting.

#### **Johnson Stock Farm**

Mr. Mohammadi reported a proposal has been received from Mr. Johnson and a counterproposal has been sent. Negotiations continue and Mr. Mohammadi recommended tabling until the next commission meeting.

#### **FY 03 319 Nonpoint Source Grant Applications**

Becky Shannon, Acting Chief of the Water Pollution Control Program Planning Section and Nonpoint Source Coordinator, reported EPA can award grants to the states to address nonpoint sources of water pollution under Section 319 of the Clean Water Act. These funds must be used in accordance with EPA rules and guidance and in accordance with the state's

Nonpoint Source Management Plan. The states may pass the funds through to other government agencies, to schools, or not-for-profit organizations. The department issued a Request for Proposals in July. Applications were due in November and a record number of 22 proposals for funding were received. Ms. Shannon noted the summary for the Missouri River Relief proposal in the briefing packet indicates that the University of Missouri is the sponsor. She noted that is incorrect and the sponsor is Missouri River Relief which is a not-for-profit organization.

Ms. Shannon stated staff is not asking for action on these proposals at this time but rather is seeking comments. Because of uncertainties with the state and federal budgets, management has asked that commission approval not be sought at this time. Ms. Shannon stated the federal budget has been approved and the amount of funding for 319 increased slightly. EPA has not provided information on Missouri's allocation at this time. Ms. Shannon noted she expects it to be near last year's total of about \$5.4 million. Of that money, the state retains a percentage for the purposes of monitoring, assessment, planning, and project oversight. The 319 grant is one of many grants received from EPA and the department is looking at how the 319 grant meshes with other funding sources before making recommendations. About \$4.2 million was passed through last year for projects.

Responding to Commissioner Easley's question, Ms. Shannon stated she does not know what to expect regarding this year's allocation.

Commissioner Perry noted the state retained about \$1.2 million last year and asked what that is retained for.

Ms. Shannon replied typically about 20% of the grant is retained for a number of monitoring and assessment activities through the Environmental Services Program, funding staff that do project oversight, and paying for staff that are involved in the TMDL development related to 319.

Commissioner Perry noted this is a way of getting other funding to the department to do that sort of activity for nonpoint source.

Ms. Shannon stated this is used in conjunction with a number of other sources to get as much bang for the buck on the ground in projects. Internally, it is used with other funding sources to address the needs that are eligible under the 319 guidance and regulation.

Responding to Commissioner Perry's question, Ms. Shannon stated 20% can be retained for the purposes outlined.

Commissioner Easley asked if the entire \$1.4 million was spent.

Ms. Shannon replied all the money that comes to the state is spent. These are multi-year grants and typically last up to seven years. The projects last for many years and funding is retained to do the oversight associated with those as the project goes on.

Commissioner Minton asked if the nonfederal match monies where dollars are associated is actual cash or if it is in-kind services.

Ms. Shannon replied it's both; in-kind services are allowed for match on 319 grants. The project sponsor reports that and it is shown as match as long as it is non-federal eligible and allocable.

Commissioner Minton asked if the list is prioritized in any way.

Ms. Shannon replied the projects are reviewed by an interagency review committee. The prioritization recommendations from that group have been done but the ranking will not be brought to the commission for action until the April commission meeting.

Commissioner Perry asked if a ranking has been done.

Ms. Shannon replied the interagency review committee prioritized the projects but the department has not signed off on that recommendation. The department wants to evaluate the budget situation before the recommendation is brought to the commission.

Commissioner Minton asked if staff can provide information on how the projects were prioritized.

Ms. Shannon noted she can provide a copy of the ranking sheet each of the reviewers uses. Specific point numbers have not been assigned to each of the criteria that has been looked at over the last few years. Each member ranks the proposal high, medium, or low and the votes are tallied for the proportional ranking.

Commissioner Perry asked if they rank projects for immediate impact on the environment versus projects with more long-term impacts.

Ms. Shannon replied EPA has awarded funding in two separate pots and guidance is different for each. The information/education projects are not eligible under one pot. The Request For Proposal does specify the criteria and the priorities and that also is discussed in the review sheet.

Commissioner Perry asked if all this funding is within the \$4.2 million and how it is distributed.

Ms. Shannon replied it is and it is distributed roughly equal.



Commissioner Minton asked if EPA dictates the split.

Ms. Shannon replied Congress dictates how the money is split.

Commissioner Perry asked if there is any way to coordinate the number of informational projects in which people are setting up various web sites.

Ms. Shannon responded the various projects have very specific and different functions. Working with the Bryant Creek Watershed project over the years staff has encouraged them to develop a system that can be duplicated by other local groups. She continued the stream team web project is state-wide and not geographically based and has a whole other function. Staff works extensively with any project sponsor to address any concerns raised by the commission or by the review committee to make sure the funds are spent in the most effective manner. Ms. Shannon noted there may be some significant changes in the final award.

Commissioner Perry noted she saw where information will be given to farmers through a more institutional basis and another where a fertilizer dealer working directly with the farmers would provide that information. She noted this seems to be a duplication of effort and one would be far more effective than the other.

Ms. Shannon replied the review committee considers that and many other factors when they evaluate the projects.

Commissioner Minton asked if the committee notifies the applicant when they believe a project is worthwhile but should be at a different funding level and if that is reflected in the information given to the commission.

Ms. Shannon responded this is not at all uncommon. It is a lengthy negotiation process and this is not done until staff knows who will receive funding.

Commissioner Perry asked if all applications are accepted and if the street sweeper qualifies.

Ms. Shannon replied that project was questionable as to eligibility. There have been projects in the past that were obviously not eligible. She stated that is noted and the information is provided to the commission. EPA is on the review committee and they usually make the final decision as to eligibility. EPA felt this may not be the best use of funds but could be eligible under the NPS Management Plan.

Commissioner Perry commented that these funds are used primarily for salaries particularly for NRCS, DNR and possibly MDC.

Ms. Shannon replied staff struggles with this and struggles with EPA over this as well. She noted if you do on-the-ground work, it's much easier to show the impacts. There are often situations where, in order to get to the on-the-ground practice, there needs to be one-on-one work with the individuals in the watershed or the person requiring technical assistance. The salary and the amount of staff time are often addressed during negotiations.

Commissioner Greene commented it takes a lot of time to write grant proposals, to manage them, to make sure things are done properly, and to do the footwork.

Commissioner Perry acknowledged this but noted we need to think about whether it's the commission's task to fund other programs or is it to do that which impacts the environment. She commented she is very excited about the MoAg project which is 75,000 acres immediately impacted to the environment. Commissioner Perry stated she is also concerned with a report she received about a grant where the committee argued with one of the presenters during the presentation. The question was asked if it would affect his fertilizer business and the presenter answered no and the reviewer responded back that it would. Commissioner Perry noted she was not there to verify the accuracy of that report but this may show a bias on the part of someone who was not being fair to this proposal. She continued that many projects are the same year after year and she is excited to see something new.

Ms. Shannon responded there have been several grants with MoAg in the past.

Commissioner Greene commented there is inherent bias in a lot of these areas and this is why there is a committee consisting of a wide variety of agencies and groups.

Commissioner Perry stated she did not know if the committee has any private industry input.

Ms. Shannon replied the committee is an inter-agency group not consisting of University or private sector representation.

#### **Proposed General Conditions for 404 Nationwide Permits**

Ms. Shannon reported Section 404 permits require the state to issue a 401 water quality certification which deals with whether or not the project will violate the state's Water Quality Standards. Staff in the Water Pollution Control Program deal with approximately 1,000 of these certifications on a yearly basis. In 2002 the state offered to the COE some general conditions for their Nationwide Permits dealing with relatively common activities. The state has offered conditions for these Nationwide Permits in the past and they were accepted by the COE but the COE did not accept them in 2002. Staff worked with the COE who has agreed to allow a submittal of revised conditions. Ms. Shannon reported staff has been working with the state contact within the COE to address the specific Nationwide Permits and the specific conditions that staff has offered on each of those Nationwide Permits. She

reported revisions have been made based on discussions with the COE and staff is ready to resubmit the package of 401 general conditions to the COE.

Commissioner Greene asked if these are much different from the original submittal.

Ms. Shannon replied they are not very different but there are significant differences in some of them. Some confusing or unclear language has been eliminated while language was added in others to clarify issues. There are still differences of opinion with the COE on Nationwide Permit 39 and staff is working to address this.

Chairman Herrmann asked what level of the COE staff is dealing with.

Mark Frazier, Special Projects Manager Kansas City District COE, stated the Kansas City District is the lead COE district for Missouri. He continued he has been identified to be the primary contact and coordinator by the division regulatory office. There are three COE divisions over five COE districts in Missouri.

Responding to Commissioner Minton's question, Mr. Frazier stated it's his opinion that the conditions would comply with the criteria the COE has for acceptance.

Commissioner Minton noted he appreciates this and he did not realize the monumental task behind developing Nationwide Permits. He continued he has read through the conditions attached to all the Nationwide Permits and it is very difficult to sort through them when you have to correlate the state's conditions with the regional conditions and correlate those to the nationwide conditions. Commissioner Minton noted he felt it was important for the public to have an opportunity to see the conditions before submittal because the first submittal of conditions was rejected. Nationwide Permits will allow staff time to work on other issues and Commissioner Minton commented he felt this review was imperative to get to that point.

Mr. Frazier replied it will be a great benefit to the regulated public in addition to staff time. He continued that the COE staff would like to have the conditions certified as well.

Mr. Hull stated his goal has been to gain COE acceptance of as many of the conditions as possible and that goal has been reached except for Nationwide Permit 39. There are significant differences on Nationwide Permit 39 and this is one that people are interested in.

Ms. Shannon noted the key difference is the amount of impact at which an individual permit would be required. The COE has indicated that up to 300' of stream impact would fall under a Nationwide Permit. Nationwide Permit 39 is residential developments and staff would like

to look at those on an individual basis to have the opportunity to attach project specific conditions if they are appropriate. Staff has used in the past and has now recommended that projects over 50' of stream impact require an individual permit.

Mr. Frazier stated looking at projects the COE receives over 50', it is estimated only one or two would fit that 50' limit so the COE believes there is no advantage to having the certification in place with that limit. He stated given the small number, the COE recommends that condition not be resubmitted for consideration and it be considered denied for the state.

Commissioner Perry asked how many applications were received for the 50' and 300' limit.

Ms. Shannon responded she cannot answer that without pulling each application. She estimated that staff had about 15 per year during 2000-2001 that fell under the 50' limit and were covered by the nationwide permit for all districts. If about 45 nationwide 39s are received per year, about 20 are in the 50'/300' category.

Commissioner Perry asked how many certifications staff will be doing on an individual basis that would have been on a nationwide permit.

Ms. Shannon replied she anticipates 40-45 per year.

Mr. Frazier noted all of the developers will look at the permits and conditions and will modify projects in different ways to try to meet one or the other. There are some nationwide permits that overlap and a developer may choose to go with one nationwide permit over another depending on the conditions.

Ms. Shannon stated the number may decrease significantly if they can do their activity under a different nationwide permit.

Responding to Chairman Herrmann's question, Ms. Shannon stated staff has begun work on a rulemaking for the Aquatic Mitigation Guidelines. Because there is significant public interest in these guidelines, staff felt it would be appropriate to hold a series of stakeholder meetings prior to proposing that rulemaking. Ms. Shannon noted these guidelines will become part of the Water Quality Standards under Chapter 7 of the Clean Water Commission rules.

Chairman Herrmann asked if the stakeholder meetings and the rulemaking will occur during the next year.

Ms. Shannon replied she anticipates needing a year for the stakeholder meetings and promulgating the rulemaking in the next year.

Chairman Herrmann noted it seems excessive to hold stakeholder meetings for a year.

Ms. Shannon noted staff is preparing to move forward with revisions to the Water Quality Standards that John Madras had begun. The rule cannot be open for more than one change at a time so this rulemaking has to be completed before another is begun.

Mr. Hull noted there is also legislation proposed that could make rulemaking more arduous which could also play into this schedule.

Chairman Herrmann asked Ms. Neff to find out what is allowed for a rulemaking.

Responding to Chairman Herrmann's question, Ms. Shannon replied there is a part of the law that addresses projects under the jurisdiction of MoDOT that excludes the department from the \$75 fee for the projects.

Don Boos, Water Quality Certification Unit of the Water Pollution Control Program, noted there is also a provision that the state cannot add any conditions to the water quality certification if MoDOT is doing a project under a Nationwide Permit.

Mr. Totten reported there is a MOU with MoDOT in which MoDOT has agreed to abide by most of those conditions.

Chairman Herrmann asked if the commission should have a copy of the MOU.

Mr. Totten noted a copy will be provided.

John Howland, Midwest Environmental Consultants, asked how the Aquatic Mitigation Guidelines will be used prior to becoming rule and when the public will get an opportunity to see the DNR proposed conditions for COE nationwide permits.

Ms. Shannon replied the briefing material has a copy of the conditions staff has proposed to the COE and there is no public comment period associated with those. They have been submitted directly to the COE in the past.

Commissioner Perry asked if the commission has a role in approving them.

Ms. Shannon replied there has not been in the past. She continued this is somewhat analogous to when an individual certification is issued. Certifications are not public noticed compared to permits that go on public notice. Ms. Shannon stated she is not aware of any part of the state's action on 401 water quality certifications being public noticed. She concluded that when the project is proposed, it is put on public notice but the conditions that are attached are not public noticed.

Commissioner Perry questioned if there is a public notice requirement as far as trying to make a more general permit.

Mr. Hull noted, with the commission's approval, staff would prefer to use the Aquatic Mitigation Guidelines as guidelines until they are promulgated into rule.

Commissioner Perry discussed the provision in administrative law where an appellant challenges a decision that was based on a policy or on some provision that was not properly promulgated as a rule. If the decision is overturned in a court proceeding, not only does the appellant win the lawsuit but also attorney fees. Commissioner Perry concluded that the commission could be setting itself up for some liability by not promulgating as much by rule as possible.

Ms. Neff stated there are about seven provisions in Statute that allow guidance documents.

Commissioner Perry noted the Aquatic Resource Mitigation Guidelines will be the basis for granting or not granting a permit.

Ms. Neff replied if they are the basis for how someone is to apply and work on something and has requirements for them, then in general that should be regulation which is why the commission took that action.

Commissioner Perry asked if that same process of thinking would apply to Nationwide Permits and the state's conditions.

Bill Bryan, Assistant Attorney General, reported Missouri agencies have two types of authority. Executive authority in which they decide cases and legislative authority in which they make rules. The kinds of standards that are generally imposed on the public at large are things that have to be done through the rulemaking procedure. Mr. Bryan stated a Nationwide Permit does not apply to the public at large.

Commissioner Perry asked if it isn't a more general thing if someone wants to engage in some sort of ground removal activity.

Ms. Shannon responded a Nationwide Permit is not required. They can get an individual water quality certification.

Mr. Bryan noted another factor to consider is the permit terms that determine how this guidance document is used if you decide to go with the rulemaking. When in doubt, go with the rulemaking. In the interim, you use common sense and look at each application on a case-by-case basis and maybe every provision in the guidance document applies to it and maybe not.

Ms. Shannon noted one issue is how to deal with the Aquatic Resource Mitigation Guidelines prior to the adoption of the rule.

Mr. Bryan noted just use common sense and apply it on a case-by-case basis.

Ms. Shannon stated the other issue is whether the state's conditions for Nationwide Permits need to be rule.

Mr. Frazier stated when the COE asks the state for a certification for one of the NWP's, they ask if the NWP will comply with the state Water Quality Standards or what conditions are necessary to make that NWP comply with the Water Quality Standards. The COE is looking at this as an interpretation of existing rules.

Chairman Herrmann asked that a copy of the Aquatic Resource Mitigation Guidelines be sent to the commission members.

Ms. Shannon noted the guidelines will be placed on the department's website in the near future.

### **303(d) Methodology Rule**

Ms. Shannon reported during its last meeting the commission directed staff to put into rule the methodology for developing the 303(d) List which had been previously public noticed. Staff has developed the language for the rule but prior to proceeding with the rulemaking process staff asked for guidance because of the potential for conflict with the federal rule. Ms. Shannon stated she talked to EPA Headquarters yesterday and they could not provide any information on the status of the federal rule. She continued that she understands it has not left EPA.

Ms. Neff stated there will be no substantive changes to the 1998 303(d) List.

Commissioner Perry noted if there is a 30-day comment period on the 303(d) List, the commission will not be able to comment with the next commission meeting being April 23.

Ms. Shannon reported EPA has indicated to her that the public comment period will be for 60 days.

Commissioner Perry stated she would like to hold a conference call if necessary in order to comment on the public notice.

Ms. Shannon asked if the commission would like staff to proceed with the methodology rulemaking at this time or continue to delay anticipating that EPA's rule will be forthcoming.

Commissioner Greene stated it takes a year to do a rule and a 2004 list has to be done.

Ms. Shannon replied there is not enough time to do the methodology and list rules before the due date of the 2004 list that is presently in the federal rule. She continued that EPA has been willing to accept a late submittal of the 303(d) List if the state is moving toward development of the list. A third option is to not do the methodology as a rule at this time but rather public notice it as was previously done and proceed with the rule for the list itself as required.

Chairman Herrmann noted the methodology is likely to change depending on what EPA publishes.

Responding to Commissioner Perry's question, Ms. Shannon acknowledged the state is required to follow EPA's methodology.

Commissioner Greene commented it sounds like the methodology rule should be put on hold.

Commissioner Perry asked if this could not be done concurrently.

Ms. Shannon responded that is correct because the methodology is the basis for development of the list. The methodology needs to receive public comment and commission approval before staff utilizes it to develop the list. Just public noticing the methodology without the rulemaking would take approximately three months rather than one year.

Commissioner Perry moved to **delay development of the 303(d) list methodology rule**; seconded by Commissioner Easley and passed unanimously with Commissioner Minton being absent.

Ms. Neff noted there is a chance it will take EPA years to act on its methodology rule.

Commissioner Greene noted that the 303(d) List rule has to be done.

Commissioner Perry noted the list can be done without doing the methodology and it's foolish to do a methodology that isn't going to be worth anything.

Commissioner Greene stated after the deadline for the next list is determined, then the commission can determine if the methodology rule should be done.

Chairman Herrmann stated the commission followed the methodology on the 2002 list and it came back on the commission. He continued that he had many questions on the 2003 303(d) List which staff responded to. Chairman Herrmann commended Mr. Hull for the fast and thorough action of the staff.



Commissioner Perry asked for a copy of what was sent to Chairman Herrmann.

**Closed Session**

Commissioner Kelly moved to **go into closed session** at approximately 12:40 p.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Greene and unanimously passed.

Commissioner Greene moved to **return to open session** at approximately 2:00 p.m.; seconded by Commissioner Minton and unanimously passed.

**Watersheds Report**

Ms. Shannon reported the commission had requested a watershed report and staff has worked to provide a foundation for future information related to watersheds. She provided a set of maps showing the 8-digit hydrologic units, the ecoregions for the entire state, and a numerical listing of all of the 8-digit hydrologic units and their name. Ms. Shannon stated there is some discrepancy between what USGS calls the hydrologic units and what Missouri calls them. Staff uses the number most frequently to avoid any confusion. Also included is an individual page for each of the 8-digit hydrologic units. In addition, these maps include long-term monitoring locations, classified waters, and 303(d) listed waters.

Commissioner Minton asked if it is possible to pull up the watershed he lives in and find all this information at his NRCS office.

Ms. Shannon replied the monitoring information is not available on the NRCS maps. She continued that NRCS has the data layers that show the 303(d) List but she isn't aware if they are available for the public to view in the county offices. Ms. Shannon noted the 8-digit hydrologic unit, along with the subwatershed and the names of the waterbodies, is at the county NRCS offices.

Commissioner Davis noted with the many projects going on it would be interesting to see who is targeting what aspects of the watershed, where we have projects that overlap, and how much money and what kind of resources are being allocated to those issues. He indicated it would be important to see if everyone is working toward the same goals and objectives. Commissioner Minton stated if a watershed approach is to be used, a map like this would be very beneficial for the various watersheds.

Ms. Shannon replied staff has some of those data layers but not NRCS. The web site that should be on-line in a few weeks organizes it by going to the 8-digit hydrologic unit to see what projects are in a watershed. Ms. Shannon continued there is a lot of information that can be provided by watershed.

Commissioner Minton commented it would be interesting to see everything in a particular watershed so that the information could be provided to the legislators to show them the impacts that are being made with the money that is being spent.

Ms. Shannon noted she will check with NRCS to see what they have available.

Commissioner Perry stated it would be interesting to see what watersheds are the most impaired. She continued that there are probably some pollution issues that wouldn't take a lot of money to clean up. Commissioner Perry stated prioritizing these to focus the money where it's needed and coordinating with the other agencies is the way to approach this.

Ms. Shannon stated in 1998 the department worked with other agencies to develop the Unified Watershed Assessment. This was required under President Clinton's Clean Water Action Plan and prioritized the 8-digit hydrologic units through the use of about 20 factors. Ms. Shannon continued the challenge staff saw with using that as the prioritization tool for funding was that the department might have a project in a high priority watershed that did nothing to address the concern. Staff felt there needed to be some additional criteria associated with it.

Commissioner Perry asked if the assessment has been updated since 1998.

Ms. Shannon replied it has not.

Commissioner Perry noted she heard that the assessment became too complicated.

Ms. Shannon replied staff wanted to refine it so that it addressed a smaller hydrologic unit than the 8-digit ones. The process began several years ago but fell by the wayside. NRCS is completing the process of redrawing the lines and renumbering so staff is not yet able to incorporate this in their work. Once NRCS approves it, the other agencies will look at it and possibly adopt it.

Commissioner Minton noted Ms. Shannon pointed out that money is sometimes spent in a watershed that has high priority but not necessarily on the impaired water in that watershed. He continued it would be interesting to see the amount of money spent in some of the areas where the people understand the concept and are very aggressive in pursuing it. The question is whether the money is being spent where it needs to be or is it being spent in the areas

where the people are more interested in the objective. Commissioner Minton suggested using the Outreach and Assistance Office to target the counties with the greatest problems and find out why they aren't doing anything about them.

Ms. Shannon replied some of the information can be obtained but when everything is put together, it is difficult to make sense of it.

Mr. Hull commented everyone agrees it would be great to approach things on a watershed basis but getting to the point of figuring out just what that is involves pulling a lot of information together.

Commissioner Perry noted other states have taken different approaches and she believes it shouldn't be abandoned just because it's difficult.

Mr. Hull noted he is not saying that at all but it's just not easy to get a grip on.

Ms. Shannon stated one important step is to get the information into a GIS format so that it can be used in the way the commission is discussing. It has taken a lot of time to get to the point where the maps can be printed out.

Commissioner Perry asked if this information has been shared with any other partners from the Water Quality Coordinating Committee.

Ms. Shannon replied this particular set of maps costs about \$35 to print so she hesitates to make a lot of copies. The information is all available in different formats.

Chairman Herrmann asked if it was on the web site.

Ms. Shannon indicated it is not. Staff is developing basin plans for each of these hydrologic units and that will contain this information and additional information about specific ecological and environmental issues and physical characteristics of the particular watershed. Staff has completed drafts on about 13 of these. When they are completed, staff will determine how best to communicate the information to the public in an understandable fashion.

Commissioner Perry asked how many 8-digit basins there are, how many of them have waters on the 303(d) List and what the next step is.

Ms. Shannon replied there are 66 and she does not know how many have waters on the 303(d) List. She reported staff is working on the basin plans and continuing discussions with NRCS and the Geological Survey and Resource Assessment Division about the watershed prioritization to explore possibilities for refining that particular tool.

Commissioner Perry stated it seems so important at this stage to coordinate with them to ensure that efforts are not being doubled.

Ms. Shannon noted the commission had requested regular reports on this issue and asked what format they wanted this in. She suggested the next report consist of information on the Unified Watershed Assessment.

Commissioner Perry replied she would like to hear that and would like to see how this is coordinating with other state agencies.

Commissioner Greene noted sharing the layers of data is doing this somewhat.

Commissioner Perry added to get them on board to do the same thing is needed.

### **Permit Efficiency Update**

Phil Schroeder, Chief of the Water Pollution Control Program Permit Section, reported that the rate of permit issuance is beginning to slow down which was anticipated as staff has moved away from outsourcing permit reviews to a consultant. Staff is staying ahead enough to not allow the backlog to grow. Mr. Schroeder stated staff will have to look at new procedures and possibly reorganization of staff duties in order to address the last of the backlog.

Mr. Schroeder reported substantial progress has been made on developing a new database system that will provide the information that the commission and staff need to manage the permit processes. He asked the commission to look at the structure of the reports to see if they will provide the information the commission requested. Permit status will track: completeness check, technical review, public notice stage, and in process of taking final action. The database will track: by permit type, where the permit is assigned, and sort by the various types of categories. The number of days left on the statutory timeclock will be monitored. There is a 180-day clock and a 60-day clock depending on the permit type. Performance reports will show how well staff has performed in the past. Reports will be categorized by permit type and region or permit manager so that staff can take a look at how quickly they are progressing through the stages and where most of the time is being taken so staff can address any apparent lags in meeting the statutory timelines or goals in processing permits.

Mr. Schroeder stated the workgroup addressing the database is looking for the final input on how to structure the database. Use of the system will probably begin within the next 30 days. Mr. Schroeder stated that permit writers will be asked to enter data for all actions taken within the last month.

Responding to Commissioner Perry's question, Mr. Schroeder responded the data in the Water Quality Information System database will automatically feed into this system. The Permit Action Management System has been used but has not worked but serves other business needs and has some duplicate data. Mr. Schroeder noted the future will tell whether the old system will remain to serve those needs or if those needs will be built into the new system. He stated he believes it will be the later because staff is trying to develop a system that can talk to all other systems.

Commissioner Perry asked if the new system will create summary sheets such as how many days it takes to process a permit.

Mr. Schroeder replied the system will show those permits that exceeded the statutory timelines.

Commissioner Perry asked if there was no other automated method at this time to get that information.

Mr. Schroeder replied there is no way to know other than going to the file or asking permit writers what the status is.

Commissioner Perry asked if applicants get refunds if staff goes beyond the statutory timeline.

Mr. Schroeder replied that is correct and all permit writers have been notifying the central office so the refund process can be initiated.

Commissioners Greene and Perry commented the new system looks great.

### **Goals and Objectives**

Mr. Hull reported Commissioner Minton noted at the January meeting it would be good to see what the Water Pollution Control Program was looking at for the next year. He continued there are a lot of good staff of the over 100 people in the Water Pollution Control Program but he believes those staff can do even better.

Mr. Hull stated the protection of water quality in Missouri can be improved by being more reasonable and timely in what we do. He noted the Clean Water Law and regulations are very complicated but sometimes they can be made more complicated than they need to be. Staff needs to look to see where there is flexibility in being able to get what you want accomplished within the framework of those existing laws and regulations by using some common sense. Communication and coordination needs to be improved within the program and external to the program.

Mr. Hull explained the following items are major initiatives and are not everything that the Water Pollution Control Program is doing. There is coordination of these initiatives between the sections within the program.

**Planning Section Initiatives**

- There is an agreement between staff and EPA to do 34 TMDLs. Staff is currently on track but it could be very easy to get behind. One of the major TMDLs that has to be completed is for the Elk River in Southwest Missouri. Completion of this TMDL involves 11 segments.

Chairman Herrmann stated if EPA decides to add back a lot of waters to the 303(d) List that had been deleted, this would impose a requirement on staff to complete a TMDL for all those waters except for mercury and habitat loss.

Mr. Hull responded eventually it would and staff can only do so many throughout the year. The goal for this calendar year is 34. The Elk River TMDL involves not only Missouri but also Arkansas and Oklahoma.

- When EPA issues its 303(d) List and the public comment period is opened, staff will have to complete its work on the list.
- Whether or not staff begins the 303(d) List for 2004 or 2006 depends on EPA's course of action. Mr. Hull noted he believes staff needs to plan to do the list in 2004.
- Certain portions of the Nonpoint Source Management Plan need revisions every year.
- 319 grant program process
- Putting into rule the Aquatic Mitigation Guidelines and clarification of the public hearing process regarding the 401 water quality certification process is needed.
- COE Acceptance of Missouri's conditions on Nationwide Permits has been discussed. Staff is close to submitting a package to the COE to gain acceptance of the majority of Missouri's conditions.
- Several rulemakings related to the Water Quality Standards need to be completed. A number of changes will be proposed through Phase I and Phase II rulemakings.

- There is a requirement to distinguish which streams in Missouri need to be designated Whole Body Contact. Staff has drafted an MOU and asked for comments from the Department of Agriculture and EPA. This MOU will have the Department of Agriculture helping with this work over the next year which will probably be a multi-year effort.
- Planning staff is trying to link their efforts back into watersheds.

### **Permitting Section Initiatives**

- An efficiency study on NPDES permitting was conducted with a number of recommendations made on how to improve that process. Some of those recommendations have been implemented and others are in the implementation phase.
- Part of the efficiency study was directed toward elimination of the permit backlog. Staff will continue to work toward elimination of this backlog.
- A number of General Permits have expired which leads to a backlog. Staff plans to do a number of these shortly. A stakeholders group will be established for the Aquaculture General Permit. Another General Permit being worked on is for contaminated soils from underground storage tank cleanups going to land farms.
- Stormwater Phase II involves permits for disturbance of land from 1 to 5 acres and stormwater plans to be submitted by a number of cities throughout the state. Staff is looking into issuing over-the-counter permits for land disturbance activities for the smaller acreages.
- Staff is also looking at over-the-counter permits for Phase I stormwater for over 5 acres for those areas of the state where the local community has an approved stormwater protection plan.
- There is a need to look at the limits placed in renewal permits when they are drafted. Coordination occurs between the Permit and Planning Sections on these limits and the Water Quality Review Sheets flow from Planning to Permits. Mr. Hull noted this activity may be moved to the Permits Section rather than having to be done in two sections.
- The Missouri Environmental Management Partnership Initiative is a voluntary program where entities try to improve their environmental performance. To encourage this, there may be initiatives that staff can do such as expediting the permit process, looking at new technology, and looking at permit requirements to see if they are duplicative requirements for those particular types of facilities.

### **Financial Services Section Initiatives**

- A new accounting data management system being done through a contract looks like it will meet staff requirements.
- Financial Services and Planning Sections need to review the priority point system to see if revisions are needed to move to a watershed basis.
- Staff is looking to implement over the next year the recommendations of the efficiency study conducted on the State Revolving Fund.
- Address the need for the Nonpoint Source Loan Program to be a bigger part of the State Revolving Fund program.
- Begin work on the Clean Water/Drinking Water IUP for FY 05 funding.

### **Engineering Section Initiatives**

- A few regulatory changes will need to be made to the commission's CAFO rule for it to be in line with the revised federal CAFO rule.
- Rulemaking to clarify when sewer connections cannot be made due to inadequate capacity.
- Develop a strategy for Combined Sewer Overflows and Sanitary Sewer Overflows to correct these situations. Mr. Hull stated there will be a lot of effort needed in this area and it will have to be done gradually.

Chairman Herrmann stated it is impractical and impossible to separate combined sewers in the older cities in most cases because of the way the connected buildings are constructed.

Mr. Hull noted that may be the case but there is still a need to make sure sewage is not running into waters.

### **Enforcement Section Initiatives**

- Be reasonable and use common sense in approaching enforcement actions while making sure that people understand the environment needs to be protected. There is a need to look at doing some side-by-side inspections in some of the regions on land disturbance activities to make sure there is consistency statewide prior to entering into enforcement actions.



Commissioner Minton noted this is precisely what he wanted to see. He wanted to know what direction the staff will be moving in and this will give an opportunity at the end of the year to see where the successes were and where improvement is needed. Commissioner Minton noted it's more extensive than what he thought he would see and he's very pleased with this approach. He continued that every item he wanted to see is included and if the staff time and money are available maybe everything will get done this year.

Mr. Hull cautioned that this is by no means all that is being done within the Water Pollution Control Program. He stated there is a lot of work relating to the budget and work plans with the regions and other entities as well as legislation.

Commissioner Minton stated this is the first time since he has been on the commission that the goals of staff have been set out for the commission.

### **Other**

#### **Budget and Legislative Discussion**

Senate Bill 309 sponsored by Senator Caskey relates to Hancock refunds. Mr. Totten reported the SRF has been hit on Hancock refunds in the past because it is a fund of the state even though it is federalized and under SRF contract and has been immediately replenished from General Revenue. Senator Caskey's bill would exclude the Water and Wastewater Revolving Loan Administration Fund from Hancock refunds because those refunds violate the Federal Clean Water Act as it was determined by EPA. While it excludes those funds from any future Hancock refunds, that difference in amount and what the department would be targeted for has to come out of the other department funds.

Senate Bill 344 sponsored by Senator Goode changes the jurisdiction of the Underground Storage Tank program from the Clean Water Commission to the Hazardous Waste Commission. The tanks program is conducted out of the Hazardous Waste Program and this would move the commission responsibilities to the Hazardous Waste Commission to consolidate everything within one program.

Senate Bill 25 sponsored by Senator Steelman would transfer the appeals on environmental issues to the Administrative Hearing Commission. Mr. Totten stated the department wants this bill to: exclude the Soil and Water Conservation Districts Commission; require transcripts of testimony to be made available so that there is a case record established; and allow affected parties to appeal department decisions as well as allow the boards, commissions or department director who made an original decision to appeal a decision of the Administrative Hearing Commission to court. Mr. Totten reported one hearing has been held and the department did not testify because they would prefer to get some changes made to the bill that was proposed.

Commissioner Perry asked if the department believes the Administrative Hearing Commission should make the final ruling in an appeal.

Mr. Totten replied the department feels it is appropriate to separate the rulemaking functions from the appeal functions. The commissions would continue to carry out all rulemaking functions as well as all other commission duties, other than the appeal functions. This would provide a more predictable, consistent appeal procedure. The department would be supportive of the Administrative Hearing Commission making the final decision provided the three items the department requested are included in the bill.

Senate Bill 252 sponsored by Senator Steelman and House Bill 474 sponsored by Representative Bivins authorize the additional sale of bonds in amounts consistent with past years. Mr. Totten noted additional authorizations are not needed at this time.

Senate Bill 36 sponsored by Senator Klindt has been amended to Senate Committee Substitute for 36 and House Bill 295 sponsored by Representative Sanders requires a risk assessment cost benefit analysis on any substantive regulations promulgated by the Department of Natural Resources and its commissions.

House Bill 215 sponsored by Representative Myers would require any environmental law to be no stricter than federal requirements. If there was no corollary federal requirement, then there could not be a state regulation unless some very difficult requirements were met. This bill was heard February 12 and the department and numerous citizen and partnership groups testified against that provision. The department believes this bill restricts the department from protecting the health and welfare of Missouri citizens by creating an extremely high standard of proof beyond a reasonable doubt. Mr. Totten reported that several groups from Southwest Missouri testified that the phosphorus rule is an example of a process that is currently in place that allows for development of regulations that are stricter than federal or regulations that the federal government doesn't even have. Representative Myers will make some amendments to this bill.

Commissioner Perry asked if this bill would affect the nationwide permits if it passes.

Mr. Totten replied it would affect anything that is a regulation and nationwide permits are not regulations.

House Bill 218 sponsored by Representative Myers would prohibit the Department of Natural Resources from issuing a notice of violation or imposing a fine for failure to timely file a required permit report unless the department has notified the permit holder about the delinquent report by registered mail. Notification would not be required for permit holders who had previously failed to timely file two or more reports within the past year or four more reports on time in the last five years. The bill also limits fines for failure to file reports on time to \$500 for the first violation. Mr. Totten noted the department believes the intent of

this bill was related to an air permitting problem in Southeast Missouri but this affects all the environmental laws because most of the department's permits require self-reporting on a periodic basis. If this reporting does not occur, the facilities will appear on the department's enforcement report and EPA's significant noncompliance report. Mr. Totten stated if the state doesn't take action, then EPA will.

Commissioner Perry asked if the department notifies the facilities if they fail to report.

Mr. Totten replied the regional offices work very hard to make sure they do report so they don't appear on the significant noncompliance report. The department typically doesn't fine for violations relating to nonreporting but notices of violation are typically issued if they do not report.

Senate Bill 297 sponsored by Senator Griesheimer would allow access to state operated sewer lines. The bill would require the Division of State Parks to connect homes and businesses adjacent to state parks and historic sites to state owned and operated sewer systems in the parks. This impacts all state facilities and would include state correctional facilities.

Senate Bill 398 sponsored by Senator Griesheimer creates the Missouri Natural Resources and Environmental Commission. Mr. Totten explained that this is the super commission bill that would abolish the Air Conservation Commission, the Clean Water Commission, the Hazardous Waste Commission, Land Reclamation Commission, Soil and Water Conservation Districts Commission, Safe Drinking Water Commission and creates a new five member commission and transfers all rights, powers, and functions to this new commission. It also gives the new commission the authority to hire up to five full time staff as long as there is an elimination of corresponding staff positions in DNR and authorizes the transfer of \$150,000 upon appropriation annually for the first four years of the creation of this entity from each of the following funds to the commission: Air Pollution Control Fund, Hazardous Waste Fund, Water Pollution Control Fund (which is where bonds that are sold are deposited in the state water pollution control fund and today has a negative balance of \$56 million), the Natural Resources Protection Fund (which includes both the water permit fees and the water and wastewater loan admin fee), the Solid Waste Management Fund (solid waste is not transferred to this new commission), the Air Pollution Control Fees and the Soil and Water Sales Tax. Mr. Totten stated a hearing is scheduled on this bill tomorrow morning.

Chairman Herrmann asked if this is \$1 million plus from each of these funds.

Mr. Totten replied it is \$150,000 from each of the ten funds so it's \$1.5 million for 2004-2008. Since all the staff, responsibilities, and funding are transferred, Mr. Totten noted he didn't understand why the \$150,000 had to be separated out. This bill essentially takes the

environmental programs and establishes a new department type function and leaves the director of the Department of Natural Resources just overseeing Parks and what remains of geology.

Commissioner Minton asked how much it costs to operate the commissions.

Chairman Herrmann responded he was told the average is \$10,000.

Ms. Neff reported Assistant Attorney General James Klahr is going to testify against this bill tomorrow.

Commissioner Minton noted the greatest argument against this bill is the present cost of the commissions versus the proposed \$1.5 million.

Mr. Totten noted that is a significant impact in this time of budget cuts. Five commissioners at \$90,000 each is \$450,000 just for salaries plus the \$1.5 million.

Senate Bill 494 sponsored by Senator Klindt eliminates DNR fee funds. The bill sweeps any excess unobligated cash balances from most DNR funds to general revenue and also eliminates the fee funds and deposits any future collections in those funds into general revenue.

Commissioner Perry asked what the purpose is for this bill.

Mr. Totten replied he is not sure but Illinois does this. Every dollar the state gets is deposited into general revenue and there is one appropriation.

Chairman Herrmann noted Illinois also does not have primacy as Missouri does.

Mr. Totten continued Senate Bill 494 also completely eliminates the Hazardous Waste Generator Category Tax totaling about \$2.5 million per year. This is the major funding for emergency response activities throughout the state. It also eliminates the abandoned mine land reclamation fund which is a federal grant set aside but does not direct that this money go to general revenue or any other account. This bill has not yet been heard.

House Bill 494 sponsored by Representative Guest eliminates the requirement for Class I CAFOs to give notice of application for the proposed operation to the county governing board and adjoining property owners and eliminates the 30-day public comment period. The bill also restricts local controls and regulations imposed by local governments from being stricter than state regulations.

House Bill 519 sponsored by Representative Blevins is an environmental audit privilege bill which allows information obtained in a voluntary audit to be exempt from disclosure and it is

inadmissible as evidence in a legal proceeding. Mr. Totten explained if a facility voluntarily tells DNR about violations discovered in an audit, the facility is immune from penalty as long as the violations are corrected within two years. The bill creates a shield from discovery related to any information gathered through a voluntary environmental audit. If a public employee violates the shield by disclosing any audit information, they are guilty of a Class A Misdemeanor.

Commissioner Perry asked for information relating to the request at the last meeting regarding the money lost to general revenue.

Mr. Totten reported budget meetings have been held with the House Subcommittee on Appropriations and with the Senate since the last meeting. The House Subcommittee marked up the budget last week and took an additional 14% from each of the general revenue items except for two where 7% was taken from each. \$1.6 million of a \$2 million budget was taken from the Outreach Center out of general revenue. For Water Pollution Control that 14% which can be divided between Personal Services and Expense and Equipment was \$40,857 which leaves 6 FTEs on general revenue. Those 6 do the state grant administration. The governor's budget for 04 recommended elimination of the Jefferson City Regional Office and the administration of that office assigning the technical staff to the other five regional offices. Any reduction in regional office staffing will impact water pollution work. An additional 7% of the regional office budget is another \$182,500 which is about 5-6 FTEs.

Mr. Totten explained the department projected a shortage of \$1.4 million for the 2001 fiscal year when the last fee bill was being debated. The 2001 budget request was amended asking for \$1.39 million and the Office of Administration countered by providing \$1,061,213 in the fee fund. Mr. Totten stated it is believed that to transfer that money back to the general revenue fund to help balance the budget for 03 was a legal act because those funds were not fee funds.

Commissioner Minton asked if anyone can make comments during the budget markup sessions.

Mr. Totten replied there was a period of time for public comment and some individuals testified on behalf of DNR's budget. He noted he is not aware of how the public is notified of that timeframe and if there is an opportunity for public input after the initial testimony.

Commissioner Minton asked if only staff will be allowed to testify at this time.

Mr. Totten replied the appropriations chair will generally provide the testimony to the budget committee and he will be quizzed. Since this is the chairman's first year in this position, he will have to depend on the department to answer many questions.

Commissioner Minton asked who he needed to see if he wanted to lobby for some issue.

Mr. Totten noted he would provide that information before the end of the meeting.

### **Water Quality Certification**

Gayle Unruh, Wetland Coordinator for the Missouri Department of Transportation, provided information to the commission regarding a section 401 certification for Route 116 in Buchanan County. Ms. Unruh stated an appeal has been requested for this project which involves bridge replacements and a box culvert. There are several wetlands involved in this project that are forested and emergent. A general mitigation plan was provided to the COE and the Water Pollution Control Program along with the application for water quality certification. The first mitigation condition, using Missouri's Aquatic Resource Mitigation Guidelines, to mitigate at a standard of 3:1 for the forested wetland and 2:1 for the emergent wetland is what is being appealed. Ms. Unruh noted mitigation of 2:1 had been requested for the forested wetland and 1:1 for the emergent wetland. A permit from the COE was received on December 6, 2002 with ratios of 1:1 for comparable wetlands on the site and 1:5:1 for off-site mitigation. The plan originally said mitigation would be attempted at the site and, if that was not possible, there was a Smithville Lake project that the Department of Transportation (MoDOT) would be involved in. MoDOT agreed with the COE ratios and asked to have the DNR ratios changed. Ms. Unruh stated MoDOT believed that using the Aquatic Resource Mitigation Guidelines as a conformance standard was probably not appropriate and could not be defended. DNR staff indicated that they could not accommodate the changes in the ratios and Ms. Unruh then wrote a letter stating MoDOT wanted to appeal to the commission. Ms. Unruh stated DNR staff explained that MoDOT's appeal was not filed within the 30-day appeal period and the appeal was not in the proper format. Counsel for DNR informed Ms. Unruh that the appeal should have been addressed to the Commission Secretary rather than to the Water Pollution Control Program and the 30-day appeal period had not been met. Ms. Unruh explained MoDOT asked for a change in the ratios within 30 days. The response from DNR was after the 30-day time period and that is when MoDOT appealed.

Ms. Neff asked if Ms. Unruh had filed an appeal.

Ms. Unruh responded that she has written a letter to the Water Pollution Control Program indicating that she wanted to appeal the ratios on those conditions and asked for the commission to rule on that.

Ms. Neff stated if the 30 days has passed, the commission doesn't have any jurisdiction to rule on the issue.

Ms. Unruh stated MoDOT's original letter to the Water Pollution Control Program on this issue was within the 30 days but DNR's response was after the 30 days. MoDOT feels they have made the effort to try to resolve the issue.

Ms. Neff stated the commission generally handles its legal matters through a hearing officer and doesn't make rulings at a commission meeting without a report and recommendation from the hearing officer.

Commissioner Minton asked if his understanding that Ms. Unruh sent a letter to Water Pollution Control Program indicating they were not satisfied with the ratios and wanted to appeal the ratios is correct.

Ms. Neff indicated she understood that MoDOT was unhappy with the ratios and asked the department to change them. In order to get an appeal in front of the commission, the appellant needs to say that they are appealing the decision.

Ms. Unruh noted that is what she did based on the response she received to the original question.

Ms. Neff stated that was not within the 30 days.

Commissioner Minton stated she would not know the outcome until after the 30 days because the Water Pollution Control Program did not respond until after that.

Ms. Neff commented it's basic law that if someone is unhappy with a decision, you have to file your appeal even if you've asked the agency for something else simply to prevent yourself from being in a situation like this. She noted this is exactly what Holcim did when their permit was issued. The appeal was filed and the parties continued to negotiate their issues.

Ms. Unruh stated the Water Pollution Control Program has offered to talk further on the issue.

Ms. Unruh further questioned if the Water Pollution Control Program has the authority to use the Aquatic Resource Mitigation Guidelines and if ratios can be based on that. She continued there were still many questions among the group and not any agreement about those mitigation ratios when those guidelines were originally worked on by stakeholders. Ms. Unruh stated in talking to the COE she understands since they are the enforcement agency for both 404 and 401, the COE can't enforce those ratios and would still have problems with the guidelines as they currently read since the basis for the guidelines is fairly arbitrary.

Ms. Unruh commented in the process of getting 401 and 404 to mesh, MoDOT has found that there is always the issue of asking for mitigation at certain ratios before the COE issues the 404 permit. The 404 generally waits for DNR to issue a 401 certification but the COE is already deciding what MoDOT's mitigation ratios are. If DNR asks for different mitigation

ratios, MoDOT's plans to go ahead with mitigation based on the COE's ratios is in conflict with DNR. The COE can enforce their ratios but not the ratios DNR imposes. Ms. Unruh stated MoDOT would prefer not to be in conflict with DNR over mitigation but the COE and DNR mitigation ratios differ.

Ms. Unruh reported the 60-day clock on 401 seems to only start after the whole COE process has taken place. When the COE notifies DNR that they need a 401 certification, the 60-day clock begins. Ms. Unruh noted there is no overlap from when the COE indicates there is a complete application and the 60-day time period in which the Water Pollution Control Program has to issue the 401. She stated there is an eight-month long increase in the entire process that doesn't seem to happen consistently but often enough that it becomes a problem for MoDOT in planning and getting projects on the ground.

Ms. Unruh concluded she understands the Water Pollution Control Program will work on the Aquatic Resource Mitigation Guidelines and MoDOT encourages this although there may be some problems with coordinating this with the public and other stakeholders.

Commissioner Minton noted he appreciates Ms. Unruh's comments because he has worked with many 401/404 certifications and endured the frustration regarding the 60-day timeframe and the differing ratios between the COE and DNR. He continued that the Little Rock and Memphis COE Districts have often asked how to figure the timeline since they do not have a grasp on what DNR is trying to do. Commissioner Minton encouraged Ms. Unruh to bring these issues up during the promulgation of the rulemaking regarding this issue. He continued that the 60-day timeline is confusing to some parties and applicants because it is not clear. Commissioner Minton noted it is difficult to determine where the enforcement on ratios is going to come from when the COE will only enforce 404 certification and not 401.

Ms. Unruh asked if it is appropriate to include the ratios if the COE feels they can't enforce them.

Mr. Hull asked the status of the project that MoDOT requested an appeal on.

Ms. Unruh responded the mitigation plan will be going to the COE in the next several weeks.

Mr. Hull noted he believes staff is willing to reconsider the ratios based on information MoDOT can provide. He stated he would be willing to withdraw the certification that was issued if that is true and issue another certification that both can agree to.

Ms. Unruh stated the request from staff was for MoDOT to submit a final mitigation plan after the fact of issuing the certification and to change those ratios. She asked what level of mitigation plan is appropriate to submit to the Water Pollution Control Program. Until the COE comes out with a specific set of requirements, MoDOT cannot finalize the plan which



does not mesh well between the programs. Ms. Unruh stated in the particular case where MoDOT requested an appeal, they felt the ratios were appropriate and actually fit the guidelines and discussion can continue.

Chairman Herrmann noted Ms. Unruh provided a copy of the Aquatic Resource Mitigation Guidelines but the commission still needs the COE guidelines so they have an idea of how the two sets agree or conflict.

Commissioner Minton noted the commission developed a set of criteria for the Holcim 401 certification that they wanted a set of mitigation plans submitted to the commission which places the COE at a disadvantage because they don't come up with their plan until all the public comments are completed. The COE now is questioning who actually has authority to determine what the mitigation plan is. This causes the COE technical problems in how to do ratios. They prefer not to develop the final plan until the state completes its comments. Commissioner Minton stated the corps districts need to be involved when the rulemaking process begins to avoid conflicts between the agencies.

Ms. Shannon stated she and Ms. Unruh have talked and DNR just needs more documentation. She continued that Commissioner Minton's statement was a good explanation of a challenge that staff has discussed with the COE.

Commissioner Minton stated the commission may have placed an undue burden on everyone at the onset.

Ms. Shannon stated staff met with the COE about trying to work out a joint processing agreement to get details ironed out. As soon as the nationwide permit issue is resolved, staff will continue to address the joint processing issue with the COE.

Ms. Unruh noted MoDOT can provide general ideas about what is going on with projects and generally do when the application is submitted.

Commissioner Perry noted it seems that MoDOT was of the understanding that they were appealing the certification when they wrote the letter requesting the change. She continued that MoDOT attorneys should have realized this was not the case but she is concerned about those that do not have an attorney or the knowledge to get an attorney. Commissioner Perry asked if information is included in the certifications that provides information on the 30-day appeal period and how to appeal.

Ms. Unruh responded the COE is very specific about this in their permit but it does not come with the DNR certification.

Commissioner Perry stated if a formal appeal is required, people have to be informed of how to go about it.

Ms. Neff replied the commission regulation specifies how to file an appeal.

Commissioner Perry asked if a copy of this rule is provided with the certifications.

Ms. Neff replied it is not.

Commissioner Perry stated other departments make it extremely clear what needs to be done if you don't agree with something.

Ms. Neff stated DNR has had problems before for giving legal advice so the Attorney General's Office has repeatedly recommended to them that they do not send out letters where they are giving legal advice to other entities because problems would arise if the legal advice is incorrect. She continued that letters from DNR regarding permits say the applicant has the right to appeal. Staff previously calculated the timeframe in which to appeal and there was a dispute about this so that is no longer done.

Commissioner Perry noted the applicant should be notified of the right to appeal and where to find the information.

Ms. Neff noted she sees every appeal that is filed with the commission and one of the charges she has is to determine whether it is timely filed. She continued that the commission has accepted appeals as basic as I do not agree with this decision and I would like to follow up on it. Ms. Neff noted she thinks that is quite a bit different from asking for a change to something.

Ms. Unruh noted her review of the statutes found that the appeal has to be filed within 30 days of the certification issuance and the appeal has to go to the commission secretary. She noted technically the appeal does not have to be passed on to a hearing officer but she wanted to bring this project to the commission as an example.

Commissioner Perry stated she would assume that MoDOT has appealed these issues before and is surprised that their attorneys did not get involved.

Ms. Unruh responded MoDOT has not previously appealed any certifications that she can recall.

Commissioner Perry stated this points out a problem for the common person and certifications are being sent to a lot of individuals who would not know the process.

Mr. Hull noted the language regarding the ability to appeal would be seen in letters relating to denials of department actions. He continued if the commission wants staff to include some language regarding appeals when transmitting documents they will do so.

Ms. Neff noted this is an informational item and if the commission wishes to do this they will have to notice it by placing it on the next meeting agenda.

Commissioner Perry noted she would like to have a report on how this is currently being done and how it should be done.

Ms. Neff responded legally it does not have to be done but the interest is in doing it as a public service. As long as legal advice is not offered, there is no legal reason that this couldn't be done.

Mr. Hull noted this appeal will be set up for hearing so that the project might be able to move forward.

Ms. Neff noted it has to be determined if the commission has jurisdiction to hear this appeal.

Ms. Unruh noted she believes some agreement can be reached on this project.

#### **Future Meetings**

Chairman Herrmann asked that the commission schedule meetings around the state in order to be more accessible to the public unless the budget is too tight.

Mr. Hull reported a meeting between the Clean Water Commission and the Hazardous Waste Commission is a possibility for June.

There being no further business to come before the commission, Chairman Herrmann adjourned the February 26, 2003 meeting.

Respectfully submitted,

Jim Hull  
Director of Staff